

## Appendix A – State Contract Questions and Answers

	Contract Location	Bidder Requested Change	SOS Response
1	Attachment 1 – Statement of Work	<p>9. <u>Software Provisions</u></p> <p>(a) <u>Platform Software</u></p> <p>These provisions apply to generally available Platform Software included in the completed VoteCal system. Platform software shall mean products that perform the following functions:</p> <ul style="list-style-type: none"><li>• operating system,</li><li>• database management,</li><li>• message switching,</li><li>• backup/restore,</li><li>• security,</li><li>• access control,</li><li>• encryption,</li><li>• intrusion prevention,</li><li>• performance monitoring,</li><li>• troubleshooting,</li><li>• source code compilation and run-time libraries ,</li><li>• debugging,</li><li>• storage management tools, and</li><li>• any other system component which is commercially available through multiple resellers, that has not been modified for use in the VoteCal and/or VoteCal EMS systems, and for which configuration is within manufacturer's published, customer-configurable options.</li></ul> <p>These provisions do not apply to any portion of the VoteCal Application Software and VoteCal EMS Application Software developed or otherwise provided to the State under this Contract.</p>	No change proposed.

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2	Attachment 1 – Statement of Work	<p>(i) <u>License Grant</u></p> <p>a) <u>The State shall license all Platform Software Products directly from the publishers of those products. The State's acceptance and use of Platform Software Products shall be governed by the terms and conditions of the end user license agreement offered by the publisher of the Platform Software product. If the terms of such license are unacceptable to the State, Contractor shall use good faith efforts to obtain terms acceptable to the State from the Platform Software provider. If Contractor is unable to obtain terms acceptable to the State, Contractor shall work with the State to identify alternative Platform Software products that the State can obtain pursuant to terms and conditions acceptable to the State. In no event shall Contractor's inability to obtain license terms for Platform Software products that are acceptable to the State, following good faith efforts to obtain such terms, constitute a breach of this Agreement by Contractor. Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use, modify and copy Platform Software as outlined below. (hereinafter referred to as "Platform Software"):</u></p> <p>b) <u>State may use the Platform Software in the conduct of its own business, and any division thereof.</u></p> <p>c) <u>The license granted above authorizes the State to use the Platform Software in machine-readable form on the Commercial Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Platform Software, in machine-readable form, on any other State CPU until the designated CPU is returned to operation. The license herein granted shall also be temporarily extended to authorize the State to use the Platform Software, in machine-readable form, on any other State CPU for up to 7 days per calendar year to</u></p>	<p>Rejected.</p> <p>SOS has stricken the right to "modify" platform software from Section 9(a)(i)a) in Addendum 8.</p>

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		<p><del>allow the state to test the ability to operate in the event that the designated CPU is inoperative, and to facilitate system maintenance.</del></p> <p>d) <del>By prior written notice, the State may redesignate the CPU in which the Software are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.</del></p>	
3	Attachment 1 – Statement of Work	<p>(ii) <u>Encryption/CPU ID Authorization Codes</u></p> <p>a) <del>When Encryption/CPU Identification (ID) authorization codes are required to operate the Platform Software Products, the Contractor will provide all codes to the State with delivery of the Software.</del></p> <p>b) <del>In case of an inoperative CPU as defined in paragraph 1c. above, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation, and to allow the State to test the alternate CPU or perform maintenance on the designated CPU, as described in 1c above.</del></p> <p>c) <del>When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.</del></p>	Reject.
4	Attachment 1 – Statement of Work	<p>(iii) <u>Fees and Charges</u></p> <p><u>The State shall have no obligation to purchase or license the Platform Software until it takes possession of the System. Upon System acceptance, Contractor will invoice the State for all acceptance of Platform Software by included in the System State,</u> in accordance with <u>Paragraphs 5 herein and the Statement of Work.</u> <u>The State's licenses in Platform Software products will be effective upon will payment of</u> the license fee or recurring charge for the Platform Software Products as set forth in Statement of Work. Charges will commence on the Acceptance Date as established in the Statement of Work. The Contractor shall render invoices for recurring charges or single charges in the month following the month in which the charges accrue.</p>	SOS has provided alternate language for this section in Addendum 8 to clarify the transfer of licenses and responsibilities for fee payment.

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5	Attachment 1 – Statement of Work	<p>(iv) <u>Maintenance</u></p> <p><u>The maintenance and support of any Platform Software products delivered to the State shall be provided pursuant to the terms and conditions of the maintenance and support plans offered by the provider of the Platform Software Product at issue. Contractor will be responsible for maintaining the System as delivered and accepted, and will obtain maintenance and support of Platform Software pursuant to the support and maintenance plans offered by the provider of the Platform Software Product at issue.</u></p> <p><del>a) The correction of any residual errors in any Platform Software that may be discovered by Contractor or by the State will be considered maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of this contract. Suspected errors discovered by the State in the Platform Software will be handled by the following procedures:</del></p> <p><del>1) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.</del></p> <p><del>2) Errors in the Platform Software as verified by Contractor will be corrected by providing a new copy of said Platform Software (or of the affected portions) in machine-readable form.</del></p> <p><del>3) The Contractor shall attempt to correct Platform Software errors within a reasonable time.</del></p> <p><del>b) Contractor will be responsible for isolating and correcting error conditions caused by the State's particular Hardware or Operating System unless the State has modified or substituted Hardware or Operating System for those components supplied under this contract. If the state has modified or substituted Hardware or Operating System for those components supplied under this contract, the Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular Hardware or Operating System at rates in accordance with the Statement of Work.</del></p>	<p>Reject.</p> <p>SOS has provided alternate language for this section in Addendum 8 to clarify the time period for which the Contractor is required to provide maintenance and support for Platform Software.</p>

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		c) <del>If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original Platform Software, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work.</del>	
6	Attachment 1 – Statement of Work	<p>(v) <u>Acceptance of Software</u></p> <p><del>Any integrated Platform Software for the VoteCal system must be purchased by and licensed to the Contractor. All required licenses purchased by the Prime Contractor shall include written acceptance by the Platform Software provider of the SOS VoteCal IT General Provisions, Appendix A, Attachment 2. Contractor agrees to provide to the SOS this written acceptance and copies of the software licensing agreement(s) no later than implementation acceptance. Implementation acceptance is conditioned upon receipt and approval of these documents. Software licensing terms and conditions provided by Contractor which are not in conflict with the SOS General Provisions, Appendix A, Attachment 2 and/or California law will be accepted by the SOS, provided however that any licensing clause, term or condition representing that the license is superior to or takes precedence over other articles, attachments, specifications, provisions, contracts, terms or conditions shall be stricken and shall have no legal effect.</del></p> <p><del>Contractor shall hold all licenses until implementation acceptance. After implementation acceptance, the licenses shall automatically pass to SOS. In the event that Contractor fails to perform on the contract, Contractor shall immediately grant all software licenses to SOS upon request by SOS.</del></p> <p><del>SOS reserves the right to waive these requirements on a case-by-case basis, at the SOS's sole discretion, if it is in the best interest of the State.</del></p>	<p>Reject.</p> <p>SOS has modified this section in Addendum 8 to include compliance with the State of California's "Third Party COTS General Provisions" dated July 15, 2008.</p>

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7	Attachment 1 – Statement of Work	<p>(vi) <u>Right To Copy or Modify</u></p> <p>a) <del>Any Platform Software provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated or alternate CPU.</del></p> <p>b) <del>The State agrees to keep any such copies and the original at a mutually designated State location, except that the State may transport or transmit a copy of the original of any Platform Software to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected. The State may also include the Platform Software in machine-readable form in physical backups of the system that are made to facilitate recovery from hardware failure or from a disaster affecting the designated CPU. These physical backups may be stored both at the site of the designated CPU and at a secure offsite storage facility.</del></p> <p>c) <del>The State may modify any non-personal computer Platform Software, in machine-readable form, for its own use and merge it into other program material; provided that nothing in this subsection c) will be construed to contradict the terms of any separate applicable third party license agreement. Any portion of the Platform Software included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this Contract.</del></p>	Accept change.
8	Attachment 1 – Statement of Work	<p>(b) <u>VoteCal System Application Software</u></p> <p>Includes any application software developed <del>or otherwise provided</del> by the Contractor to meet the business functional requirements of this contract for the VoteCal Application <del>and any of Contractor's pre-existing software that Contractor delivers to the State pursuant to this Agreement</del>. This provision does not apply to Platform Software, as described in 9a above, or to the VoteCal EMS Application Software products as described in 9c below.</p>	<p>Reject. SOS intends that the definition of "VoteCal System Application Software" is based on the function and purpose of the software, not its source.</p> <p>SOS has updated the language of this section in Addendum 8 to clarify the definition of VoteCal Application Software.</p>

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9	Attachment 1 – Statement of Work	<p>(i) <u>License Grant</u></p> <p>a) Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, <del>the a</del> non-exclusive, non-transferable, perpetual <u>license right</u> to use, modify and copy the VoteCal System Application Software listed in Statement of Work of this Contract (hereinafter referred to as "VoteCal Application").</p>	Accept change.
10	Attachment 1 – Statement of Work	<p>b) State, <u>and any division thereof</u>, may use the VoteCal Application in the conduct of its <del>own business</del> <u>ordinary, internal business purposes, and any division thereof. In no event shall the State or any division thereof resell, re-license, or otherwise use the VoteCal Application in a manner that damages Contractor's commercial interests or competes, directly, or indirectly with Contractor for future sales of software similar to the VoteCal Application.</u></p>	<p>Reject.</p> <p>SOS has provided alternate language for this section in Addendum 8 to clarify and restrict the State's right to use VoteCal Application software.</p>
11	Attachment 1 – Statement of Work	<p>c) <u>Except as limited above</u>, <del>t</del>The license granted above authorizes the State to use the VoteCal Application on any Computer System for any government purpose in California, and to modify the software, or to adapt the software in whole or in part for any government purpose in California.</p>	Accept change.
12	Attachment 1 – Statement of Work	<p>(ii) <u>Encryption/CPU ID Authorization Codes</u></p> <p>The Contractor shall not apply any encryption or CPU ID authorization code capability to the VoteCal Application that in any way restricts the ability of the State to install and use the VoteCal Application on any Hardware or Operating System, nor shall the Contractor apply any mechanism that limits the period of usability of the VoteCal Application.</p> <p>(iii) <u>Fees and Charges</u></p> <p>Upon acceptance of the VoteCal Application by State, in accordance with the Statement of Work, State will pay the contracted fees for the development and use of the VoteCal Application. Upon payment of the onetime contracted fee, the license grant to the state will be perpetual without recurring use charges and is not</p>	No change proposed.

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		<p>dependent upon the State's continuing to contract for software maintenance of the VoteCal Application.</p> <p>(iv) <u>Maintenance</u></p> <p>a) The correction of any residual errors in any VoteCal Application that may be discovered by Contractor or by the State during the first year after acceptance will be considered maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of this contract.</p> <p>b) During the period of contracted software maintenance the Contractor will at no additional charge:</p> <p>(1) Correct all errors affecting business functions identified by the State or Contractor in any VoteCal Application Software product.</p> <p>(2) Restore the VoteCal Application Software to performance and functionality equivalent to that of the product when accepted following the installation of any manufacturer-provided security-related maintenance for any other component of the system.</p> <p>c) Suspected errors discovered by the State in the VoteCal Application Software will be handled by the following procedures:</p> <p>(1) The State will provide the vendor with a clear description of the problem, including the activity performed when the error occurred, the expected outcome, and the unexpected or undesirable outcome obtained. The State will also identify the impact on business processes of the problem, and identify any workaround implemented to mitigate that impact. The State will report the problem using an automated trouble reporting system if provided by the Contractor.</p> <p>(2) Errors in the VoteCal Application Software as verified by the Contractor will be corrected by providing a new copy of both source and object</p>	



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		<p>code for said VoteCal Application Software (or of the affected portions) in machine-readable form, along with any instructions for implementing the correction.</p> <p>(3) The Contractor shall attempt to correct VoteCal Application Software errors within a reasonable time. The Contractor will apply its best efforts to correct or provide a reasonable workaround for errors affecting business processes.</p> <p>d) Contractor will be responsible for isolating and correcting error conditions caused by the State's particular Hardware or Operating System unless the State has modified or substituted Hardware or Operating System for those components supplied under this contract. If the state has modified or substituted Hardware or Operating System for those components supplied under this contract, the Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular Hardware or Operating System at rates in accordance with the Statement of Work.</p> <p>e) If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original system as proposed by the Contractor and delivered under this contract, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work.</p> <p>(v) <u>Acceptance of Software</u></p> <p>Acceptance of the VoteCal Application will be governed by the Statement of Work.</p>	

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13	Attachment 1 – Statement of Work	<p>(vi) <u>Right To Copy or Modify</u></p> <p>Upon acceptance and payment for project phase containing the VoteCal Application deliverable, there shall be no restriction on the state's ability and right to copy or modify the VoteCal Application, or on its ability to distribute and install the VoteCal Application, <u>all for the government purposes allowed by this Agreement in California.</u></p>	Accept change.
14	Attachment 1 – Statement of Work	<p>(vii) <u>Future Releases</u></p> <p>Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions of the VoteCal Application Software, or of any <u>of Contractor's</u> software products identified in the Contractor's Proposal as a basis or component of the VoteCal Application, are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option at a price no greater than the price offered to other government licensees to upgrade from the version provided to the State to the <u>new same</u> version <u>of the product provided to another government licensee.</u></p>	<p>Accepted.</p> <p>SOS has provided additional language for this section in Addendum 8 to clarify the State's rights with respect to applicable enhancements or modifications to Contractor's applications that are similar to the VoteCal Software Application.</p>
15	Attachment 1 – Statement of Work	<p>(viii) <u>Source code</u></p> <p>The Contractor shall turn over the source code, the object code, the complete software release implementation directions, and any additional software that is required to prepare, modify, document, or operate the VoteCal Application Software to SOS. <u>The State's use of such source code materials will be subject to the limited use license granted above.</u></p>	Accept change.
16	Attachment 1 – Statement of Work	<p>(c) <u>VoteCal EMS Application Software</u></p> <p>Includes any application software developed <u>or otherwise provided</u> by the Contractor to meet the business functional requirements of this contract for the VoteCal EMS <u>and any of Contractor's pre-existing software included in VoteCal EMS</u></p>	Reject. SOS intends that the definition of "VoteCal EMS Application Software" is based on the function and purpose of the software, not its source.

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		<u>Application Software</u> . This provision does not apply to Platform Software, as described in 9a above, or to the VoteCal System Application Software products as described in 9b above.	
17	Attachment 1 – Statement of Work	<p>(i) <u>License Grant</u></p> <p>a) If the State exercises the option to acquire the VoteCal EMS for one or more counties, the Contractor will hereby grant to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, <del>the a</del> non-exclusive, non-transferable, perpetual <u>right license</u> to use, modify and copy the VoteCal EMS Application Software listed in Statement of Work of this Contract (hereinafter referred to as "VoteCal EMS ").</p>	Accept change.
18	Attachment 1 – Statement of Work	<p>b) State <u>and any division thereof</u> may use the VoteCal EMS in the conduct of its <u>ordinary, internal business purposes. In no event shall the State or any division thereof resell, re-license, or otherwise use VoteCal EMS in a manner that damages Contractor's commercial interests or competes, directly, or indirectly with Contractor for future sales of software similar to VoteCal EMSown business, and any division thereof.</u></p>	<p>Reject.</p> <p>SOS has provided alternate language for this section in Addendum 8 to clarify and restrict the State's right to use VoteCal EMS application software.</p>
19	Attachment 1 – Statement of Work	<p>c) <u>Except as limited above, t</u>The license granted above authorizes the State to use the VoteCal EMS on any Computer System for each California county for which SOS has exercised the option and paid the fees specified in this contract for that county, and to modify the software, or to adapt the software in whole or in part for any government purpose in those counties.</p>	<p>Reject.</p> <p>SOS has provided alternate language for this section in Addendum 8 to clarify and restrict the State's right to use VoteCal EMS application software.</p>
20	Attachment 1 – Statement of Work	<p>(ii) <u>Encryption/CPU ID Authorization Codes</u></p> <p>The Contractor shall not apply any encryption or CPU ID authorization code capability to the VoteCal EMS that in any way restricts the ability of the State to install and use the VoteCal EMS on any Hardware or Operating System, nor shall the Contractor apply any mechanism</p>	No change proposed.

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		<p>that limits the period of usability of the VoteCal EMS.</p> <p>(iii) <u>Fees and Charges</u></p> <p>Upon acceptance of the optional VoteCal EMS by the State, in accordance with the Statement of Work, the State will pay the contracted fees for the use of the VoteCal EMS in one or more counties at the State's option. Upon payment of the onetime contracted fee for every county for which the State chooses to exercise the VoteCal EMS option, the license grant to the state for use by those counties will be perpetual without recurring use charges and is not dependent upon the State's continuing to contract for software maintenance of the VoteCal EMS.</p> <p>(iv) <u>Maintenance</u></p> <p>a) The correction of any residual errors in any VoteCal EMS Application Software that may be discovered by Contractor or by the State during the first year after acceptance will be considered to be maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of the contract.</p> <p>b) During the period of contracted software maintenance, the Contractor will at no additional charge:</p> <ol style="list-style-type: none"> <li>1) Correct all errors affecting business functions identified by the State or Contractor in any VoteCal EMS Application Software software product.</li> <li>2) Restore the VoteCal EMS Application Software product to performance and functionality equivalent to that of the product when accepted following the installation of any manufacturer-provided security-related maintenance for any other component of the system.</li> </ol> <p>c) Suspected errors discovered by the State in the VoteCal EMS Application Software will be handled by</p>	

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		<p>the following procedures:</p> <ol style="list-style-type: none"> <li>1) The State will provide the vendor with a clear description of the problem, including the activity performed when the error occurred, the expected outcome, and the unexpected or undesirable outcome obtained. The State will also identify the impact on business processes of the problem, and identify any workaround implemented to mitigate that impact. The State will report the problem using an automated trouble reporting system if provided by the Contractor.</li> <li>2) Errors in the Software Product as verified by Contractor will be corrected by providing a new copy of both source and object code for said Software Product (or of the affected portions) in machine-readable form, along with any instructions for implementing the correction.</li> <li>3) The Contractor shall attempt to correct VoteCal EMS Application Software errors within a reasonable time. The Contractor will apply its best efforts to correct or provide a reasonable workaround for errors affecting business processes.</li> <li>d) Contractor will be responsible for isolating and correcting error conditions caused by any county's particular Hardware or Operating System unless the state or county has modified or substituted Hardware or Operating System for those components specified by the Contractor under this contract. If the county has modified or substituted Hardware or Operating System for those components supplied under this contract, the Contractor will be available to assist the State in isolating and correcting error conditions caused by the county's particular Hardware or Operating System at rates in accordance with the Statement of Work.</li> <li>e) If Contractor is called upon by State to correct an error caused by State's negligence, modification by State,</li> </ol>	

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		<p>State supplied data, Machine or operator failure, or due to any other cause not inherent in the original system as proposed by the Contractor and delivered under this contract, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work.</p> <p>(v) <u>Acceptance of Software</u></p> <p>Acceptance of the VoteCal EMS Application Software will be governed by the Statement of Work.</p>	
21	Attachment 1 – Statement of Work	<p>(vi) <u>Right To Copy or Modify</u></p> <p>Upon acceptance and payment for VoteCal EMS Application Software, there shall be no restriction on the state's ability and right to copy or modify the VoteCal EMS, or on its ability to distribute and install the VoteCal EMS Application Software, <u>all for the purposes allowed by this Agreement for government purposes</u> for any county for which the state has exercised the options and paid the associated fees.</p>	<p>Reject.</p> <p>SOS has provided alternate language for this section in Addendum 8 to clarify the State's right to copy or modify the VoteCal EMS Application Software.</p>
22	Attachment 1 – Statement of Work	<p>(vii) <u>Future Releases</u></p> <p>Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions of the VoteCal EMS Application Software, or of any <u>of Company's</u> software products identified in the Contractor's Proposal as a basis or component of the VoteCal EMS Application Software, are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option at a price no greater than the price offered to other government licensees to upgrade from the version provided to the State to the <u>same version of the product provided to another government licensee</u> <del>new version</del>.</p>	<p>Reject.</p> <p>SOS has provided additional language for this section in Addendum 8 to clarify the State's rights with respect to applicable enhancements or modifications to Contractor's applications that are similar to the VoteCal EMS Application Software.</p>
23	Attachment 1 – Statement of Work	<p>(viii) <u>Source code</u></p> <p>The Contractor shall turn over the source code, the object code, the complete software release</p>	Accept change.

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		implementation directions, and any additional software that is required to prepare, modify, document, or operate the VoteCal EMS Application Software to SOS. <u>The State's use of such source code materials will be subject to the limited use license granted above.</u>	
24	Attachment 1 – Statement of Work	<p><b><i>Note: This section, "Government Purpose Rights", was deleted from the contract in its entirety in Addendum 3</i></b></p> <p>10. <u>Government Purpose Rights</u></p> <p>"Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product within the State for any State government purpose <u>that is not otherwise inconsistent with this agreement</u> and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose <u>that is not otherwise inconsistent with this agreement</u>. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, and the U.S. federal government. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose <u>that is not otherwise inconsistent with this agreement</u>. <u>In no event shall "Government Purpose Rights" give the State or any division thereof the right to resell, re-license, or otherwise use intellectual property licensed from the Contractor in a manner that damages Contractor's commercial interests or competes, directly, or indirectly with Contractor for future sales of software similar to the VoteCal Application.</u></p>	Reject. This section of the contract was deleted in Addendum 3.
25	Attachment 1 – Statement of Work	<p>10. <u>Special Provisions</u></p> <p>(a) <u>Invoicing and Payment</u></p> <p>The Bidder may only bill for the completion of each phase upon acceptance of all deliverables in that phase in accordance with Exhibit 2 and 3 (less the holdback of</p>	No change proposed.

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		<p>10%).</p> <p>The Contractor cannot submit an invoice more frequently than once a month. All phases or work authorizations for which all deliverables have been accepted in writing during the month must be grouped into a single monthly invoice submitted for approval.</p> <p>The State agrees to compensate the Contractor in accordance with the rates specified in the attached Cost Tables.</p> <p>Prior to submitting the invoices to the address below, the HAVA Activity Sheet will be submitted to the Contract Manager for approval and signature of the VoteCal Project Director. The signed HAVA Activity Sheet must be submitted with the monthly invoice. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:</p> <p style="text-align: center;">Secretary of State Attn: Accounts Payable P O Box 944260 Sacramento, CA 94244-2600</p> <p>(b) <u>Ten Percent 10% Withholding</u></p> <p>In accordance with Public Contract Code, Section 12112, the State will withhold, from the invoiced payment amount to the Contractor, an amount equal to ten percent (10%) of the payment. Such retained amount shall be held by the State and only released to the Contractor upon the State's Project Manager determination that the Contractor has satisfactorily completed all of the required services.</p>	
26	Attachment 1 – Statement of Work	<p>(c) <u>Liquidated Damages</u></p> <p>It is agreed by the State and the Contractor that in the event of failure to meet the requirements which follow, damage shall be sustained by the State and that it is and will be impractical and extremely difficult to ascertain and determine the actual damages which the State will sustain</p>	Accept change.



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		<p>in the event of and by reason of such failure; and it is therefore agreed that the Contractor will pay the State <u>the amounts set forth below</u> for such failures at the sole discretion of the State according to the following subsection. The purpose of liquidated damages is to ensure adherence to the requirements in the contract. No punitive intention is inherent.</p> <p>Additionally, time is of the essence in the contract. It is the State's intent to meet the VoteCal Project Final Implementation Date as specified in the project schedule at the time of award. If for any reason the Contractor is delayed in meeting the Final Implementation Date, Liquidated Damages in the amount of two thousand five hundred dollars (\$2500) per working day may be assessed for each working day the Final Implementation Date is delayed; <u>provided, however, that in no event shall the total liquidated damages assessed exceed \$1,000,000.</u> The State will notify the Contractor, in writing when Liquidated Damages are being invoked. The State will provide the contractor a complete accounting for all Liquidated Damages.</p>	
27	ATTACHMENT 1 Exhibit 2 – VoteCal System Tasks and Deliverables	<p><b>PAYMENT MILESTONES</b></p> <p>This SOW identifies seven (7) phases for the project. There are payment milestones at the end of each of these phases. Payment for attaining a payment milestone will <u>only</u> be made when <u>all the deliverables in the associated with that phase have has</u> been successfully completed with written acceptance from SOS. To obtain payment <u>for a completed phase</u>, the Contractor must submit an invoice for that <u>phased deliverable</u>, together with the signed acceptance letter for <u>each the</u> deliverable associated with the phase and completed HAVA Activity Sheets for that <u>deliverable phase</u>.</p>	Reject. SOS must maintain an approach that is uniform for all bidder methodologies. SOS is unwilling to pay for deliverables before a prior phase is complete.
28	ATTACHMENT 2 – SOS VoteCal IT General Provisions	<p><b>18. WARRANTY:</b></p> <p>a. Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the</p>	Reject. SOS has provided alternate language for this section in Addendum 8 to clarify the Contractor's obligation to warranty the delivered and

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		<p>requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) <u>other than generally available third-party hardware and software products</u>, the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. <del>In addition to the other warranties set forth herein, w/V</del>here the Contract calls for delivery of Commercial Software <del>from third-party software providers. Contractor warrants that, other than defects in the third-party software, those products will operate with the System as designed and delivered by Contractor. The State's warranty for defects in such third-party Commercial Software shall be limited to the warranty provided by the third-party software provider., Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation.</del> The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.</p>	accepted VoteCal system.
29	ATTACHMENT 2 – SOS VoteCal IT General Provisions	<p>b. Contractor warrants that Deliverables furnished hereunder (i) will <u>have been tested, using commercially reasonable practices, prior to delivery, and the results of those tests will have shown the Deliverables to</u> be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.</p>	Reject change. Testing has been addressed in the Appendix A, Attachment 1, Exhibits 2 and 3.
30	ATTACHMENT 2 – SOS VoteCal IT General Provisions	<p>c. Unless otherwise specified in the Statement of Work:</p> <p>i. Contractor does not warrant that any Software</p>	No change proposed.

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		<p>provided hereunder is error-free or that it will run without immaterial interruption.</p> <p>ii. Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.</p> <p>iii. Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.</p> <p>d. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.</p> <p>e. Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:</p> <p>i. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or</p> <p>ii. should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not</p>	

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		<p>exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."</p> <p>f. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.</p>	
31	ATTACHMENT 2 – SOS VoteCal IT General Provisions	<p><b>28. INDEMNIFICATION:</b></p> <p>Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, <u>to the extent such claims or losses result resulting</u> from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation <u>engaged by Contractor to furnishing-furnish or supplying-supply</u> work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:</p> <p>a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and</p> <p>b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.</p>	Reject change.